

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

**Michelle Edwards,**

Petitioner.

Case No: 12-M-CH-AWG23

Claim No: 7-8072963-5

Order Date: April 12, 2012

**DECISION AND ORDER**

On December 14, 2011, Petitioner filed a hearing request concerning a proposed administrative wage garnishment action by the U.S. Department of Housing and Urban Development (“HUD”) to collect an alleged debt against Petitioner. The Debt Collection Improvement Act of 1996, as amended, 31 U.S.C. § 3720D, authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States government.

The administrative judges of this Office have been designated to determine whether the alleged debt in contested administrative wage garnishment proceedings is enforceable against the debtor. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. The Secretary has the initial burden of proving the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.* Pursuant to 31 C.F.R. § 285.11(f)(4), on December 19, 2011, this Office stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated December 19, 2011.)

**Background**

On March 31, 2005, Petitioner executed and delivered a Note (“Note”) authorized under the regulations governing the Title I insurance program. (Secretary’s Statement (“Sec’y Stat.”), ¶ 1, filed January 3, 2012; Ex. 2, Declaration of Gary Sautter, Acting Director, Asset Recovery Division, HUD Financial Operations Center of the United States Department of Housing and Urban Development (“Sautter Decl.”), dated December 30, 2011, ¶ 3.) After default by Petitioner, the Note was assigned to HUD by Domestic Bank under the regulations governing the Title I Insurance Program. (Sec’y Stat., ¶ 2; Sautter Decl., ¶ 3.)

The Secretary's attempts to collect the amounts due under the Note have been unsuccessful. (Sec'y Stat., ¶ 3; Sautter Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$23,326.84 as the unpaid principal as of November 30, 2011;
- b) \$935.21 as the unpaid interest on the principal balance at 1% per annum through November 30, 2011;
- c) \$1,484.06 as the unpaid penalties and administrative costs as of November 30, 2011; and
- d) Interest on said principal balance from December 1, 2011, at 1% per annum until paid.

(Sec'y Stat., ¶ 4; Sautter Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated November 15, 2011, was mailed to Petitioner. (Sec'y Stat., ¶ 5; Sautter Decl., ¶ 5.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), the Notice offered Petitioner the opportunity to enter into a repayment agreement with HUD under mutually agreeable terms. As of this date, Petitioner has not entered into a written repayment agreement. (Sec'y Stat., ¶ 6; Sautter Decl., ¶ 6.)

The Secretary's proposed repayment schedule for this debt is \$715.17 per month or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 6; Sautter Decl., ¶ 7.)

### **Discussion**

Petitioner challenges collection of the debt on the grounds that an administrative wage garnishment in the amount requested by the Secretary will create a financial hardship for her. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed December 14, 2011.) Petitioner bears the burden of proving, by a preponderance of the evidence, that the terms of the Secretary's proposed repayment schedule would create the claimed financial hardship. 31 C.F.R. § 285.11(f)(8)(ii).

Specifically, Petitioner states: "this would be a financial hardship, it wouldn't leave me enough to maintain my household and child and pay 15% of my income." ("Pet'r's Hr'g Req.") This Office has held that financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *In re Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986). However, the existence of financial hardship requires a mitigation of the amount of the garnishment allowable by law. 31 C.F.R. §§ 285.11(k)(3).

Disposable income is defined as "that part of the debtor's compensation from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld ... [including] amounts for deductions such as Social Security taxes and withholding taxes." 31 C.F.R. § 285.11(c). Based on Petitioner's pay statements, her average

bi-weekly gross salary is \$1,941.40, or \$3,882.81 per month. (Pet'r's Doc. Evid., pp. 31-34.) The following average monthly deductions are taken from Petitioner's salary: federal income tax (\$152.00); health insurance (\$136.00); Medicare (\$56.00); Ohio income tax (\$114.00); county income tax (\$76.00); and city income tax (\$38.00). Petitioner is therefore left with an average disposable monthly income of \$3,310.81.<sup>1</sup>

This Office twice ordered Petitioner to provide documentary proof of payments, copies of pay statements, copies of bills and other documents showing payment of essential expenses. (Notice of Docketing, 2; Order to Petitioner, issued March 1, 2012.) In response, Petitioner has produced documentary evidence supporting only some of her claimed expenses. (Petitioner's Documentary Evidence ("Pet'r's Doc. Evid."), filed March 22, 2012.) As a result, the Court's financial hardship determination is limited to the evidence provided, as well as any amounts it can reliably deduce from the record.

Petitioner has filed credible evidence of the following essential household expenses: water/sewage (\$145.00); cell phone (\$158.00); car payment (\$332.00); car insurance (\$95.00); food and household necessities (\$200.00); gasoline/transportation (\$50.00); and life insurance (\$52.00).

The Court has previously ruled that credit may be given for certain essential living expenses based on a petitioner's estimates when the "financial information submitted by Petitioner . . . [was found to be] generally credible . . . ." *In re Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004). Petitioner's estimates of her monthly electric and natural gas expenses are generally supported by the documentary evidence provided. Therefore, in accordance with *Loera*, the Court will credit Petitioner with monthly expenses of \$120.00 for natural gas service and \$90.00 for electric service. Petitioner also claims costs of \$817.63 for rent/mortgage, but does not substantiate this claim with additional documentary evidence. She has also provided no evidence to support her estimate of \$200.00 for groceries and \$50.00 for gasoline. However, because Petitioner's financial information is generally credible and her claimed expenses are well within reasonable consumption patterns for rent, food and gasoline, the Court grants these claimed expenses full credit.

Petitioner has also provided evidence of several monthly expenses that this Office will not credit against her disposable pay. Such expenses include payments for Petitioner's satellite television, internet service, and a car alarm system. This Office does not consider these payments to be essential living expenses. *See Charles R. Chumley*, HUDOA No. 09-M-CH-AWG09 (April 6, 2009). Accordingly, these expenses will be excluded from the financial hardship determination.

In sum, this Office will credit Petitioner with a total of \$2,059.63 for essential monthly living expenses. Deducting this amount from her monthly disposable pay of \$3,310.00 leaves a remaining balance of \$ 1,250.37 per month. A 15% garnishment of Petitioner's monthly disposable income, as proposed by the Secretary, would equal \$466.85, leaving Petitioner with \$783.52 to cover her remaining monthly expenses. This amount does not include the \$280.00

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<sup>1</sup> Petitioner also receives \$280.00 in child support each month. Income from child support does not figure into the disposable income calculation because it is not "compensation from an employer." *See* 31 U.S.C. § 285.11(c).

per month Petitioner receives in child support payments. Upon consideration of the evidence of record, it is my determination that the proposed garnishment will not cause Petitioner significant financial hardship. I therefore find that the debt remains past due, and that Petitioner remains indebted to HUD in the amount claimed by the Secretary.

**ORDER**

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**. It is hereby

**ORDERED** that the Secretary is authorized to seek collection of this outstanding debt by means of administrative wage garnishment in the amount of 15% of Petitioner's disposable pay.

A handwritten signature in black ink, appearing to read 'H. Alexander Manuel', is written above a horizontal line.

H. Alexander Manuel  
Administrative Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of the foregoing **DECISION AND ORDER** by Administrative Judge H. Alexander Manuel, HUDOA No. 12-M-CH-AWG23, were sent to the following parties on this April 12, 2012, in the manner indicated:

**BY REGULAR MAIL**

Michelle Edwards  
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Cleveland, OH 44128-1214

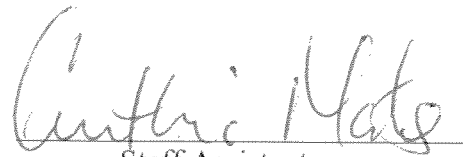
Petitioner, *Pro Se*

**BY E-MAIL AND REGULAR MAIL**

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